



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0076]

RIN 1625-AA00

Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone during the "Baltimore Air Show", which consists of aerial practices, performance demonstrations and air shows, to be held over certain waters of the Patapsco River adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland from June 14, 2012 through June 17, 2012. This rule is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of the Patapsco River during the event.

DATES: This rule is effective from June 14, 2012 through June 17, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being

available in the docket, are part of docket USCG-2012-0076 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0076 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD" in the Federal Register (77 FR 13522). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Navy History & Heritage Command, Office of Commemorations, is planning to conduct the "Baltimore Air Show" on June 15, 2012, June 16, 2012, and June 17, 2012. The public event will consist of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor. In addition to the air show dates, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor on June 14, 2012. A large spectator fleet is anticipated for the event, as part of the War of 1812 Bicentennial Commemoration activities. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic on specified waters of the Patapsco River in the vicinity of the practices, demonstrations and air shows. To address safety concerns during the event, the Captain of the Port, Baltimore is establishing a safety zone upon certain waters of the Patapsco River. This zone addresses safety concerns immediately outside the aerobatic show box, including the required patrols of law enforcement and safety vessels,

establishment of emergency egress routes, and sponsor-designated spectator areas.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issue that was presented by the commenter concerning the proposed regulations.

The commenter, Mr. Dan Leaman of Spirit and Seadog Cruises, stated that the proposed Baltimore Air Show "air box" will prevent their dining cruises and sightseeing tours from operating in the outer portions of Baltimore Harbor.

We disagree. The Baltimore Air Show "air box" follows the safety requirements established by the Federal Aviation Administration. The proposed safety zone is tailored to impose a minimum adverse affect on port operations and waterway users in the Patapsco River at Baltimore, Maryland during the event. Further, discussions with interested parties will continue prior to the planned event, and authorization to transit the area of the safety zone may be obtained from the Captain of the Port Baltimore or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below

we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Maritime advisories will be widely available to the maritime community before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will

not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that

are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary section, § 165.T05-0076 to read as follows:

§ 165.T05-0076 Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD.

(a) Regulated areas. The following locations are a regulated area:

(1) All waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16'00"N, longitude 076°36'30"W; thence to latitude 39°16'00"N, longitude 076°33'00"W; thence to latitude 39°14'30"N, longitude 076°33'00"W; thence to latitude 39°14'30"N, longitude 076°36'30"W; thence to the point of origin, located adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland.

(2) Within the regulated area described in paragraph (a)(1) of this section, an aerobatic show box is located on all waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°15'44"N, longitude 076°35'55"W; to latitude 39°15'19"N, longitude 076°33'25"W;

thence to latitude 39°14'49"N, longitude 076°33'35"W; thence to latitude 39°15'15"N, longitude 076°36'04"W; thence to point of origin. All coordinates reference Datum NAD 1983.

(b) Definitions: As used in this section:

(1) Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations: The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05-0076.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port

Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) Enforcement periods: This section will be enforced from 10 a.m. until 6 p.m. on June 14, 2012, from 10 a.m. until 6 p.m. on June 15, 2012, from 10 a.m. until 6 p.m. on June 16, 2012, and from 10 a.m. until 6 p.m. on June 17, 2012.

Dated: April 24, 2012

Brian W. Roche
Commander, U.S. Coast Guard

Acting Captain of the Port Baltimore.

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